WEST VIRGINIA CODE: §29-3C-4

§29-3C-4. Certification program; duties of the State Fire Marshal; rulemaking.

(a) The State Fire Marshal shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to establish a program for the certification of electrical inspectors. Proposed rules shall provide: Standards and procedures for certification, including applications, examinations, fees, qualifications, procedures for investigating complaints, revoking or suspending certifications, and for renewing licenses. The State Fire Marshal may propose emergency rules to implement the provisions of this article: *Provided*, That the emergency rules specify an initial certification fee of $50.

(b) The State Fire Marshal shall certify an electrical inspector upon a finding that the applicant possesses the requisite qualifications.

(c) When considering whether an applicant possesses the qualifications for certification as an electrical inspector, the State Fire Marshal shall consider whether an applicant's prior criminal convictions directly and specifically relate to the certification being sought.

(1) The State Fire Marshal may not disqualify an applicant from initial certification because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that directly and specifically relates to the duties and responsibilities of the activity requiring certification such that granting the applicant licensure would pose a direct and substantial risk to the public because the applicant has not been rehabilitated. In determining whether a criminal conviction directly and specifically relates to a profession or occupation, the State Fire Marshal shall consider, at a minimum:

(A) The nature and seriousness of the crime for which the individual was convicted;

(B) The passage of time since the commission of the crime;

(C) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(D) Any evidence of rehabilitation or treatment undertaken by the individual, including the following, if applicable:

(i) The age of the individual when he or she committed the offense;

(ii) The completion of the criminal sentence;

(iii) A certificate of rehabilitation or good conduct;

(iv) Completion of, or active participation in, rehabilitative mental health, drug, or alcohol treatment;

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(v) Testimonials and recommendations, which may include a progress report from the individual's probation or parole officer;

(vi) Education and training;

(vii) Employment history relevant to the license being sought;

(viii) Whether the individual will be bonded in the occupation; and

(ix) Other evidence of rehabilitation the individual submits to the commissioner.

(2) Notwithstanding any other provision of this code to the contrary, the State Fire Marshal may not disqualify an applicant from initial licensure because of a prior criminal conviction if:

(A) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(B) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(C) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from certification, to be determined by the State Fire Marshal.

(3) An individual with a criminal record who has not previously held a certification under this section may petition the State Fire Marshal at any time for a determination of whether the individual’s criminal record will disqualify the individual from obtaining a certification. This petition shall include sufficient details about the individual’s criminal record to enable the State Fire Marshal to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction.

(d) Notwithstanding any other provision of this chapter to the contrary, an individual may not be required to disclose, nor may the State Fire Marshal consider, an arrest not followed by a conviction in an application for initial licensure or a determination under §29-3C-4(c)(3) of this code. If a criminal background check is reviewed, the disposition of any arrest or charge must be included.

(e) The State Fire Marshal shall update his or her licensure forms, other relevant public-facing documents, and website to explain the requirements of this section, including, but not limited to, the availability of the process set forth in §29-3C-4(c)(3) of this code.

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